

ESTTA Tracking number: **ESTTA490205**

Filing date: **08/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Teva Pharmaceutical Industries Ltd.
Granted to Date of previous extension	08/22/2012
Address	Science Based Industries Campus Jerusalem, 91010 ISRAEL

Name	Teva Respiratory, LLC		
Entity	limited liability company	Citizenship	Pennsylvania
Address	425 Privet Road Horsham, PA 19044 UNITED STATES		

Attorney information	Lisa A. Pieroni Kirschstein, Israel, et al. 425 Fifth Avenue 5th Floor New York, NY 10016 UNITED STATES lap@kirschsteinlaw.com Phone: 212-697-3750
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Applicant Information

Application No	85458757	Publication date	04/24/2012
Opposition Filing Date	08/21/2012	Opposition Period Ends	08/22/2012
Applicant	Patricia Huntington Suite 303 121 N Post Oak Lane Houston, TX 77024 UNITED STATES		


Goods/Services Affected by Opposition


Class 010. All goods and services in the class are opposed, namely: nasal filter strips for therapeutic use that adhere to the outside of both sides of the nose and have an island of non-invasive filter to allow breathing and to strain out impurities in the air
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Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85108272	Application Date	08/16/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	I-BREATHE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Pharmaceutical preparations for the treatment of respiratory diseases		

U.S. Application No.	85116137	Application Date	08/26/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REDI-BREATHE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Breath operated inhalers filled with anti-asthmatic prescription pharmaceutical preparations Class 010. First use: Breath operated inhalers sold empty for therapeutic use		

U.S. Application No.	85398038	Application Date	08/15/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REDIBREATHE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: Breath operated inhalers filled with anti-asthmatic prescription pharmaceutical preparations Class 010. First use: Breath operated inhalers sold empty for therapeutic use

Attachments	85108272#TMSN.jpeg (1 page)(bytes) 85116137#TMSN.jpeg (1 page)(bytes) 85398038#TMSN.jpeg (1 page)(bytes) IBREATHE Opposition_20120821143053.pdf (1 page)(91194 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lisa A. Pieroni/
Name	Lisa A. Pieroni
Date	08/21/2012

Opposer Teva Pharmaceutical Industries Ltd, a corporation organized under the laws of Israel and located at Science Based Industries Campus, Jerusalem, Israel, 91010 (hereinafter "Teva Pharm") and Opposer Teva Respiratory, LLC, a limited liability company organized under the laws of the State of Pennsylvania and located at 425 Privet Road, Horsham, Pennsylvania, 19044 (collectively "Opposers") believe that they will be damaged by registration of the mark shown in Application Serial No. 85/458,757 and hereby opposes the same. As grounds for this opposition, Opposers allege that:

1. Opposer Teva Pharm is one of the world's largest pharmaceutical companies specializing in the development, production and marketing of generic and proprietary branded pharmaceuticals.

2. Opposer Teva Respiratory is the wholly owned U.S.-based respiratory subsidiary of Teva Pharm committed to providing high-quality, affordable treatment options to people with asthma, chronic obstructive pulmonary disease (COPD) and exercise-induced bronchospasm (EIB).

3. On August 16, 2010, prior to the filing of Application Serial No. 85/458,757 Opposer Teva Pharm filed U.S. Application Serial No. 85/108,272 for the mark I-BREATHE for goods in Class 5 for "pharmaceutical preparations for the treatment of respiratory diseases."

4. On August 26, 2010, prior to the filing of Application Serial No. 85/458,757, Opposer Teva Respiratory filed U.S. Application Serial No. 85/116,137 for the mark REDI-BREATHE for goods in Class 5 for "breath operated inhalers filled with anti-asthmatic prescription pharmaceutical preparations" and Class 10 for "breath operated inhalers sold empty for therapeutic use."

5. On August 15, 2011, prior to the filing of Application Serial No. 85/458,757, Opposer Teva Respiratory filed U.S. Application Serial No. 85/398,038 for the mark REDIBREATHE for goods in Class 5 for "breath operated inhalers filled with anti-asthmatic prescription pharmaceutical preparations" and Class 10 for "breath operated inhalers sold empty for therapeutic use."

6. The goods identified by Applicant as those to which it intends to apply the mark IBREATHE, are in the same class of goods and are nearly identical to those identified in Opposers' applications and on which it intends to use its marks.

7. Applicant's trademark IBREATHE opposed herein is identical in sound, appearance and connotation to the I-BREATHE trademark and nearly identical in appearance and connotation to the REDIBREATHE and REDI-BREATHE trademarks previously applied for by Opposers that it is likely that when Applicant's said mark is applied to its goods, confusion or mistake among purchasers and potential purchasers will result, and consumers and the trade are likely to believe that Applicant's trademark IBREATHE and any goods sold or offered thereunder are associated with or sponsored by Opposers.

8. Because of the confusion, mistake and deception which is likely to result from the concurrent registration and use of Opposers' trademarks I-BREATHE, REDIBREATHE and REDI-BREATHE and Applicant's nearly identical trademark IBREATHE in connection with related goods, Opposers' business and reputation will be seriously damaged and its rights under its aforesaid trademarks will be impaired by registration of the published IBREATHE mark. In addition, Opposers' rights in its said trademarks will be diluted by registration of the published IBREATHE mark.

WHEREFORE, Opposers demand judgment sustaining this opposition and adjudging that the Applicant is not entitled to the registration of the trademark for which it has filed Application Serial No. 85/458,757.